

ADVISORY OPINION NO. 96-31
ISSUED BY THE
WEST VIRGINIA ETHICS COMMISSION
ON JULY 11, 1996

PUBLIC SERVANT SEEKING OPINION

A County Administrator

OPINION SOUGHT

Is it a violation of the Ethics Act or West Virginia Code 61-10-15 for a County Commission to appoint the spouse of a County Commission member to serve on the Board of Trustees of a County Hospital?

FACTS RELIED UPON BY THE COMMISSION

The County Commission appoints the members of the Board of Trustees of the County Hospital. These Trustees do not receive compensation for their services but are reimbursed for any expenses incurred during the performance of their official duties. The County Commission would like to appoint the spouse of a County Commission member to serve on this Hospital Board.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) provides in pertinent part that... no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body...

West Virginia Code Section 61-10-15 states in pertinent part that...It shall be unlawful for any member of a county commission...to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member he may have any voice, influence or control.

ADVISORY OPINION

The Ethics Act

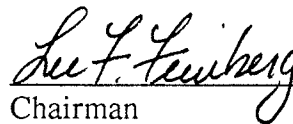
The Ethics Act contains a prohibition against public servants having a personal financial interest in public contracts which their public position gives them authority to award or control. Members of the County Commission have the authority to appoint the members of the Hospital Board and they have an interest in the employment contracts of their spouses.

However, it would not be a violation of the prohibition against interests in public contracts, or any other provision of the Ethics Act, for the Commissioner's wife to serve as an unpaid member of the Hospital Board of Trustees, since neither the Commissioner's wife, nor the Commissioner would have any financial benefit from her service. This would not be the case if the position were a paid position.

WV Code § 61-10-15

The appointment of the Commissioner's wife would not be a violation of WV Code § 61-10-15 for the same reasons cited above, i.e., although the Commissioner has authority to appoint his wife and has a financial interest in his wife's employment contracts, neither he nor his wife can benefit financially from her uncompensated service on the hospital board.

Pursuant to WV Code 6B-2-3, any person acting in good faith reliance on an advisory opinion is immune from the sanctions of WV Code 61-10-15, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon such opinion.


Chairman